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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/539,992	03/30/2000	Gauri Saxena	204,482	9688

7590 03/27/2007
Abelman Frayne & Schwab
150 East 42nd Street
New York, NY 10017

EXAMINER

BELL, KENT L

ART UNIT	PAPER NUMBER
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1661

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/539,992	Applicant(s) SAXENA ET AL.	
	Examiner Kent L. Bell	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

Detailed Action

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 3, 4, 10, and 11, The origin of the instant plant must be unambiguously set forth in the specification. Applicant states the instant plant “has been developed from callus through *in vitro* tissue culture technique”. However, applicant has not stated whether the instant plant was derived from cells multiplying into different mutated cells naturally or if applicant has applied a mutagen in order to arrive at the instant plant. Correction and/or clarification is necessary. If applicant applied a mutagen to the cells then the methodology used should be set forth in the specification.

Detailed Action

B. Applicant should set forth in the specification whether the instant plant has been asexually propagated as the instant plant needs to be stable and reproduce true to type when asexually propagated in order to receive a U.S. Plant Patent. Applicant must particularly point out where and in what manner the variety of plant has been asexually reproduced (MPEP 1605, 37 CFR 1.163(a)).

C. Applicant should set forth in the specification the age of the plant when described.

D. Where color is a distinctive feature of the plant, the color should be positively identified in the specification by reference to a designated color as given by a recognized color dictionary or color chart (MPEP 1605). Applicant has not set forth or utilized a recognized color dictionary or color chart.

E. Applicant should review the entire specification, Claim, and abstract. The cultivar name for any cultivar set forth should be in single quotation marks as this is the proper way to designate a cultivar name. This does not need to be done if the words “cultivar” or “cv.” are placed before the cultivar name. Correction is necessary.

Detailed Action

F. Page 3, line 1, Applicant should set forth in the specification the typical and observed plant shape and diameter.

G. Page 3, line 3, Applicant should set forth in the specification additional information relative to the instant plant's stem including the typical and observed length, diameter, and coloration with reference to a recognized color chart.

H. Page 3, line 3, Applicant states nodes are "pinkish". Pinkish is vague. Applicant should set forth in the specification a color designation for the "pinkish" color with reference to a recognized color chart.

I. Page 3, line 4, Applicant states "Branches 91-101". This recitation is not understood as it is unclear what applicant is intending. Correction and/or clarification is necessary. Applicant should set forth in the specification the typical and observed branch number, length, diameter, and coloration with reference to a recognized color chart.

J. Page 3, lines 5-13, Applicant should set forth in the specification additional information relative to the instant plant's leaves including the typical and observed leaf shape (the recitation thick, serrated with round lobes is not clear a botanical shape designation should

Detailed Action

be used), length, width, margin and base descriptors, and coloration (both surfaces) with reference to a recognized color chart.

K. Page 3, line 14, Applicant states petiole is “pinkish”. Pinkish is vague. Applicant should set forth in the specification a color designation for the “pinkish” color with reference to a recognized color chart. Further, applicant should set forth in the specification the typical and observed petiole diameter.

L. Applicant should set forth in the specification information relative to the instant plant’s flower including the typical and observed flower arrangement (typically an umbel), quantity of flowers (how many buds and open flowers per umbel), flowering season, flower longevity (how long an individual flower lasts on the plant), umbel longevity (how long the entire inflorescence lasts on the plant), umbel height, umbel diameter, flower height, flower diameter, flower bud shape, flower bud length, flower bud diameter, petal quantity, petal shape, petal length, petal width, petal apex, margin, and base descriptors, texture, and coloration (both surfaces) with reference to a recognized color chart, sepal quantity, sepal length, sepal width, sepal shape, sepal apex and margin descriptors, and coloration (both surfaces) with reference to a recognized color chart, peduncle length, peduncle diameter, and coloration with reference to a recognized color chart, pedicel length, pedicel diameter, and coloration with reference to a

Detailed Action

recognized color chart, reproductive organs including the androecium: stamen quantity per flower, filament length, filament color with reference to a recognized color chart, anther length, anther width, anther shape, pollen amount, pollen color with reference to a recognized color chart, gynoecium: pistil quantity per flower, pistil length, stigma diameter, stigma shape, stigma color with reference to a recognized color chart, style length, style color with reference to a recognized color chart, ovary length, ovary diameter, ovary color with reference to a recognized color chart, seed development, disease/pest resistance, and garden performance.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Detailed Action

Comments

U.S. Plant Patent number 17,422 is provided to show the state of the art in the Geranium class. The botanical characteristics described in this U.S. Plant Patent is reasonably complete. MPEP 1600- Plant Patents is provided as another reference to use when writing a U.S. Plant Patent application.

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell